

REMARKS

Claims 5 and 9 have been cancelled as being drawn to non-elected subject matter. Claims 1-4 and 6-8 remain pending. No further amendments are presented at this time. Rather, reconsideration of the application is respectfully requested in view of the remarks which follow.

As an initial matter, Applicant affirms its oral election of Group I, directed to claims 1-4 and 6-8, and drawn to n-phenyl-2-pyridine-amine compounds and compositions thereof. Non-elected claims 5 and 9 have therefore been cancelled.

The afore-mentioned election was made by telephone on August 2, 2005, solely to comply with the Restriction Requirement as communicated by the Examiner. The right to file one or more divisional applications on non-elected subject matter is expressly reserved.

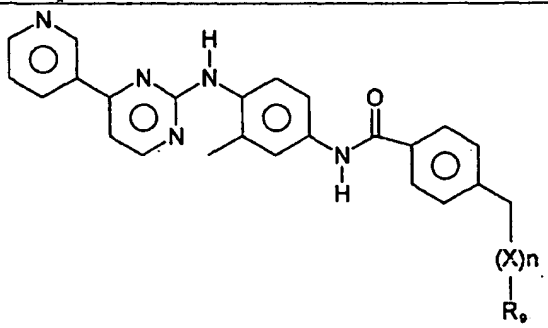
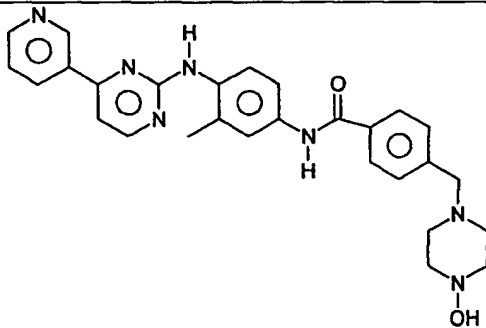
As a further initial matter, Applicant appreciates the indication of allowable subject matter, i.e., that claims 2-4 are merely objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

The only outstanding rejection is summarized as follows. Claims 1 and 6-8 stand rejected under 35 USC 102(b) over Netzer et al. (US 2004/0028673, published on 2/12/04 which corresponds to USSN 10/337,261).

The rejection is traversed. The cited art does not teach or suggest the present invention in any manner sufficient to sustain the rejection.

For instance, the compounds of the present invention as recited in independent claim 1 are distinct from the compounds of the cited reference, because the R₉ substituent in the present invention represents piperazinyll or

homopiperazinyl, each of which is substituted by lower alkyl. In contrast thereto, the corresponding moiety present in the cited invention represents a piperazinyl substituted by OH (N-hydroxyl), as shown in the following table.

The present invention	The cited invention
 wherein X represents oxygen or NH, n=0 or 1	

That is, the compounds of the present invention have parts of the piperizinyl substituted by the lower alkyl group, and those of the cited reference have parts of the piperizinyl substituted by the hydroxide. Additionally, the physicochemical properties of hydroxide and lower alkyl are different from each other and they would not be viewed as equivalent by one skilled person in the art. Therefore, it is respectfully submitted that the present invention is readily distinguishable from the cited reference.

The rejection is therefore properly withdrawn. See, for example, *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978) ("[r]ejections under 35 U.S.C. §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art.")

In view of the remarks presented above, it is respectfully submitted that the application is in condition for immediate allowance.

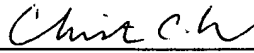
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-7-

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Respectfully submitted,

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